

1 IN THE UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 -----x
4 DOROTHY E. NICKLOFF,

5 Plaintiff,

6 vs.

7 LIGGETT & MYERS, INCORPORATED,
a Delaware corporation, BROWN &
8 WILLIAMSON TOBACCO CORPORATION,
a Delaware corporation, R. J.
9 REYNOLDS TOBACCO COMPANY, a New
Jersey corporation, and TOBACCO
10 INSTITUTE INCORPORATED, a Dis-
trict of Columbia corporation,

11 Defendants.
12 -----x

: No. 71 1123 WMB

13
14 Washington, D. C.

15 Monday, April 16, 1973
16 -----

17 DEPOSITION OF

18 HORACE R. KORNEGAY
19 -----

20
21 REYNOLDS REPORTING ASSOCS., INC.
22 1730 RHODE ISLAND AVE., N.W.
23 WASHINGTON, D. C.
24 -----

25 Telephone: 833-3598
833-3599

Property of: Ness, Motley
Main PI File Room
Charleston, SC

T076410

AFTERNOON SESSION

(1:30 o'clock p.m.)

Thereupon,

WILLIAM KLOEPFER, JR.

a witness in the above-entitled matter, was called for examination by counsel for the plaintiff and, after having been sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. BUTLER:

Q Would you state your name for the record?

A William Kloeppfer, Jr.

Q Do you live in Washington, D. C.?

A No.

Q Where do you live?

A In Maryland.

Q Whereabouts?

A [DELETED]

Q Can you give a street address?

A [DELETED]

Q Have you ever had your deposition taken before, Mr.

Kloeppfer?

A No.

Q I am sure that counsel have explained the nature of

* To correct stenographic error. WK

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the deposition but, in case they have not, let me tell you that I am going to ask you questions under the oath that has just been given. The statements that you give here are the same as if they were given in a court of law. The oath that you take here has the same force as the oath that you take in court. It is important that you answer the questions that are put to you. If you don't understand the question, ask me to explain it so that I can attempt to clarify it, so that the answer is, hopefully, to the question that I put to you. You will be given an opportunity at the conclusion of the deposition to examine the questions and answers after the court reporter has transcribed them into booklet form. At that time you will be given an opportunity to both correct or change the deposition because sometimes the court reporter may not get exactly the words said, or there might be a misspelling. Consider those corrections. Changes may be of importance. Changes are actually an alteration in the meaning of the answer which you gave. So, it is important that you give the answer which is both truthful and correct at this particular sitting.

Do you work for the Tobacco Institute?

A Yes.

Q For how long have you worked for them?

A Five and one half years.

T076624

Q What was the year that you started, 1968?

A No.

Q 1967?

A Yes.

Q When in 1967?

A November.

Q What was your first position with them?

A Vice President.

Q Was it vice president of any particular section of the company or with any particular subtitle?

A Yes.

Q What was that?

A Public Relations.

Q Did anyone ever explain to you the nature of the job before you became vice president?

A Yes.

Q Who did that?

A The president of the Institute.

Q Who was president at that time?

A Earle Clements.

Q Can you tell me just generally what was explained to you, what your duties would be as vice president in public relations as explained by Mr. Clements?

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MR. ROTHMAN: I am not sure I can understand the relevancy of that.

MR. BUTLER: It is preliminary. I think that our agreement, at least our understanding of the agreement, was that we would be allowed preliminary questions with respect to establishment of jurisdiction.

MR. ROTHMAN: I don't know what a preliminary question is.

MR. BUTLER: I think in this context it would be to establish the nature and scope of this man's duties in connection with this employment.

MR. ROTHMAN: If you are inquiring as to what was explained to him in respect to his duties in California, if any, I would not object.

MR. BUTLER: I think we are entitled to find out the general nature of his duties and then specifically with reference to those activities in California. I think we must first preliminarily establish what the general nature of his duties were.

MR. ROTHMAN: With all due respect, I will not object to any questions you want to put to him with respect to what his duties were in California. Questions in respect to anything else are afield and I would ask you to limit your questioning.

MR. BUTLER: Would you be willing to adjourn these

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proceedings to go to the federal court to see if we could have a preliminary jurisdiction on oral motion this afternoon?

MR. ROTHMAN: I think it has to be done by Judge Burn.

MR. BUTLER: Under the federal rules, we are enabled to do that. I think we would save a lot of time if you would be willing to do it. We are entitled to do that here.

MR. ROTHMAN: I would have to consider that.

MR. BUTLER: Would you consider it at this point, because I think that it is very important for the plaintiff, at least to be able to inquire as to the general aspects of the duties of this particular man and also in the other areas of controversy with respect to his activities in Congress, generally his activities before trade commissions and, in addition, whatever general media organizations he might be attempting to influence, any activities that he has had which attempt, in any general way, to influence public opinion in a general nature and not limited to California.

MR. ROTHMAN: The problem that I see immediately is this: we are not here in a normal deposition. We are here after having arrived at certain stipulations and agreements which then took the form of an order out of the Federal District Court of California by Judge Burn. We are here today as the result of his order. It seems to me because we are here under

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those circumstances, working through his order, that it would only be a proper practice for our agreement to be modified by him. So, I think I would not be prepared to orally argue this in front of a judge who has not been briefed as to the background and circumstances of this case.

MR. BUTLER: The stipulation, as I understand it, is only that the depositions would be taken at this time and this place and on these days. I don't know of any limiting order with respect to the Court's order.

MR. ROTHMAN: There was an order made by the judge in California which resulted in our meeting -- I think it was the 20th of February -- at which time the letter agreements were arrived at, which ultimately became the letter agreements. There are stipulations and orders filed with the court on several occasions, most of which we have here now.

MR. DAN: The thrust of those orders, however, to embody the stipulation agreement upon, between and amongst counsel was to the extent that depositions would proceed upon the subject matter of the jurisdiction issue which has been raised by your client's motion as to dates for the taking of the deposition and the final stipulations in order to deal with some of the production of documents that need not be produced here by your client. As far as a limitation as to what, indeed, is a

T076628

question relevant to the issue of jurisdiction which has been the contention here for the past day and the day before, I see no limiting provision. It would be a proper form to go before the judge and determine the intent of the stipulations as I signed them or as the judge so ordered. I think that is a question more properly addressed to the judge when he is asked to take cognizance of the motion before him.

MR. ROTHMAN: The fact is, and I think the record is quite clear irrespective of what counsel says to the contrary, that the reason we are here taking the depositions today and the reason we are here having given you a series of documents is that in order to satisfy the order of Judge Burn in California we arrived at many compromises on both sides. Theoretically, you would not have 85 percent of the documents but for the fact that we arrived at these compromises. We did that in thinking of complying with the order of Judge Burn. If there is going to be any further discussion with respect to these documents, modifications of the orders, questions as to whether you can use these documents which were given to you in the compromise areas, all questions should be more appropriately brought before Judge Burn.

It might be that you have already established a sufficient record to go back to him for your purposes in this case. Maybe

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we ought to consider adjourning deposition now and letting you go back to California and get your order. Because, I think the manner in which we proceed with Mr. Kloepper really is going to fall in under the same general categories that we had with Mr. Kornegay.

MR. DAN: At this time, from your statement, you would be refusing to go see a federal judge in Washington?

MR. ROTHEMAN: Yes. Surely I am refusing to go to a federal judge in Washington on the basis which I put, which is that we just bounce into his chambers or his courtroom and he is going to know nothing about the case. He has no facts. I would not hesitate going before a judge in Washington with the appropriate briefing of the problem. For example, there has to be a whole body of law on the question of whether or not you have become amenable to jurisdiction. I don't think you can represent that to a court orally.

MR. DAN: I think this preliminary question is clearly within any scope of any jurisdiction whatsoever.

MR. ROTHEMAN: In the spirit of moving on, I will let him answer.

The question was: what was the definition of his duties given to him by Mr. Clements when he came there?

THE WITNESS: To communicate with the public.

T076630

BY MR. BUEFFER:

Q Is that the end of your answer?

A Yes.

Q Is that all Mr. Clements told you with respect to your duties; was to communicate with the public? Did he suggest subject matter?

A No.

Q Were you ever told by anyone in authority at the Tobacco Institute that you were going to be dealing with the relationship between smoking and health?

A Yes.

Q By whom?

A By the president.

Q Mr. Clements?

A Yes.

Q At that first meeting?

A No.

Q At a subsequent meeting?

A Yes.

Q Immediately afterwards?

A I don't know what you mean by "immediately".

Q Was it within a few days or a few weeks, a few months? When were you told that you were going to be dealing

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with the problem of smoking and health?

A Within a few weeks of the first meeting to which you referred.

Q Before that point, what had been your experience in public relations?

A I have done public relations work for approximately 15 years.

Q Can you tell me something about your background for each of those years?

MR. ROTHMAN: You have an exhibit, Counsel, the number of which escapes me, which represented to you the complete background of Mr. Kloopfer. You specifically asked for it and we gave it to you.

MR. BUTLER: I don't think it deals with specifically those 15 years and his experience in public relations. I would like to press the question, if I may.

MR. ROTHMAN: All right, answer it.

THE WITNESS: My employment from 1952 until 1955, was with the Republican National Committee.

BY MR. BUTLER:

Q In what capacity?

A Assistant to the publicity director.

Q Who was that?

T076632

MR. ROBINSON: Just a moment. Not relevant. Objected to and I instruct the witness not to answer.

BY MR. BUTLER:

Q What is from 1955 on?

A In 1955 and 1956, I was employed by a member of Congress.

Q Who was that?

A Laurence Curtis.

Q From what state was he?

A Massachusetts.

Q Next?

A From 1957 until 1959, I was employed by the U.S. Civil Aeronautics Board.

Q In what capacity?

A Director of public information.

Q Next?

A From 1959 until 1967, I was employed by the Pharmaceutical Manufacturers Association.

Q In what capacity?

A Director of public information.

Q Where were they located?

A Washington, D. C.

Q Then did you leave them and go to the Tobacco Institute?

T076633

A Yes.

Q Were your duties at the Pharmaceutical Association similar to your duties here with the Tobacco Institute?

A Yes.

Q Tell me what generally were your duties with respect to the Tobacco Institute?

A To provide information to the public about tobacco.

Q Do you have people who work under you?

A Yes.

Q How many people?

A Two persons at the professional level.

Q Who are they?

A Mrs. Duffin and Mr. Barr.

Q Can you give me first names?

A Anne and Albert.

Q When you say, "provide information to the public about tobacco", would it be more specifically that your general duties are dealing with tobacco and health?

A In part.

Q In large part or in minor part?

MR. ROTHMAN: We put up with so much here. Exhibit No. 6, which we gave you yesterday --

MR. BUTLER: Don't, do you have it in hand? The exhibits

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have not been in our custody and control.

MR. ROTHMAN: You are the only one who has had them since yesterday.

MR. BUTLER: That is incorrect.

MR. ROTHMAN: Exhibit No. 6, Mr. Butler, contains every single answer to every question you have put to the witness for the past 10 or 15 minutes. Just for fairness, we ought not to do that to the people who are here.

BY MR. BUTLER:

Q Mr. Kloepper, as you understand your duties with respect to the Tobacco Institute, do your duties in large part deal with the problems of public information on tobacco and health?

MR. ROTHMAN: I am objecting to the use of "in large part". I have no objection to him telling you what he does.

MR. BUTLER: He said "in part". I am trying to find out is that the principal function of his office.

MR. ROTHMAN: You mean is it more than 50 percent of his time?

MR. BUTLER: At least.

THE WITNESS: Yes, I believe so.

BY MR. BUTLER:

Q Is that also true of your assistants, Mrs. Duffin

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and Mr. Barr?

A No.

Q What is Mrs. Duffin's function and what is Mr. Barr's function?

A It is true of Mrs. Duffin.

Q Mr. Barr?

A It is not true of Mr. Barr.

Q What are his duties?

A Primarily economic information.

Q On tobacco crops generally, tobacco sales, that sort of thing?

A Yes.

Q How do you carry out your duties? Can you tell me how your office operates?

MR. ROTTMAN: I don't know what that question means.

BY MR. BUTLER:

Q What do you do to carry out the duties of providing public information with respect to tobacco and health?

A Communicate with the public.

Q How? I want to know the techniques that you use.

MR. ROTTMAN: I have no objection to his telling you whatever techniques he used with respect to the State of California but I think it is far afield if you are talking about techniques

T076636

in other areas.

MR. BUTLER: We want to know generally and specifically with California. Maybe you will be satisfied if we get to the specifics.

BY MR. BUTLER:

Q Be it understood that I don't want you to tell me anything that you do, that you don't do in California. For instance, if you give press releases to newspapers and they include California newspapers, that is the kind of information I am trying to find out. I am not asking you to give me anything that you don't do that does not in any way affect or similarly affect newspapers in California or areas of California. Do you understand that limitation?

A Yes.

Q Tell me what you do?

A I communicate orally, in writing and in print.

Q How do you do it orally?

MR. ROTHMAN: By his mouth.

BY MR. BUTLER:

Q Do you set up interviews? Do you have press conferences? What do you do?

A In California, I do not do that.

Q Have you ever done that in California? Have you ever

T076637

had a press conference in California?

A No.

Q Do you prepare broadcasts, radio broadcasts?

A No.

Q Do you prepare any television programs?

A I have done so.

Q What particular programs?

MR. ROTHSCHILD: The question is: does he prepare television programs for California, in all fairness.

BY MR. BUTLER:

Q Have you prepared television programs which were meant for network audiences?

A No.

Q Have you presented programs which were meant for general distribution throughout the United States including California?

A May I ask what you mean by "program"?

Q We are talking about television programs at this point.

MR. ROTHSCHILD: The question is: did he prepare a television program which was to be made available for general use throughout the United States including California?

MR. BUTLER: Throughout the United States, including

T076638

California?

THE WITNESS: No.

BY MR. BUTLER:

Q Did you have anything to do with the preparation of the television programs which were spot programs which were released to television stations throughout the United States on a voluntary basis in -- I don't remember the year?

A I don't understand the question.

Q Are you familiar with the fact that the Tobacco Institute at one point had prepared television programs which were released to the television stations throughout the United States on a voluntary basis dealing with the problem of smoking and health?

MR. ROTHMAN: Can I help you, Mr. Butler?

MR. BUTLER: I would just as soon have his answer on the record.

MR. ROTHMAN: I think he is having trouble in your use of the word "program", when what you really intend to use is the word "spot". I think that will clarify the issue. Was that unfair?

BY MR. BUTLER:

Q Does that help?

A Yes.

T076639

Q Did you have anything to do with that?

A With spots?

Q Yes.

A Yes.

Q Do you make some distinction between "spot" and "program" in public relations programs?

A Yes.

Q What did you have to do with the preparation of the television spots?

MR. ROTHEMAN: The state of the record, Mr. Butler, is that the television spots to which you are referring did not come into California. It is not the state of the record through this witness.

MR. BUTLER: My understanding is that they were sent out but they may or may not have been shown in California. That is what my understanding is of the record.

MR. ROTHEMAN: I think you may be correct. I defer to your wisdom.

BY MR. BUTLER:

Q Tell me what you have to do, if anything, with either the preparation or distribution of those spots?

A I directed it.

Q You directed the production of the actual spot itself?

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A I requested that.

Q With whom did you operate, what agency?

A The name of it was the Bates Agency.

Q In New York City?

A Yes.

Q You cooperated with them in both text and visual presentation, did you?

A Yes.

Q Then did you direct the distribution with respect to those spots?

A Yes.

Q Did that include, to your knowledge, stations in California?

A I believe so.

Q Do you know which ones particularly?

A No.

Q Did it also include network programming?

A I believe not.

Q Is it that you just have no recollection of it or is it that you actually are stating that it was not done?

A I believe it was not done.

Q Is there a list somewhere showing the distribution to the stations in California of these particular spots and I am referring to within the Tobacco Institute?

T076641

A There may be.

Q Do you know under what title or under what filing system or under what description that distribution could be identified?

A No.

Q Who would the custodian of such a distribution list be?

A The Institute.

Q But who within the Institute?

A I believe I would be.

Q Do you have separate files, separate from the general files of the Institute?

A My office has files which reflect our work.

Q That would include distribution lists for such things as the television spots?

A It may.

Q Do you have any reason to believe that it would not be there? Would it be destroyed under some sort of a destruction program?

A It may be.

Q Do you have a destruction policy with respect to records within your department?

A I have a judgment rather than a policy.

T076642

Q Is it your judgment or is it someone else's?

A It is mine.

Q In your judgment, have you directed the destruction of any particular files within the last year?

A I may have.

Q Do you know whether that includes distribution lists of public relations materials for the periods between 1960 and 1972?

A I don't understand what you mean by "public relations materials".

Q Is the section which you operate known as the "communications section" of the Tobacco Institute?

A Informally, yes.

Q With reference to that particular section, do you say that as a matter of judgment there may have been certain files which have been destroyed in the last year?

A Yes.

Q Is there any record kept of which files have been destroyed?

A No.

Q Then there would be no way of knowing what files had been destroyed under that destruction program which was mentioned; is that correct, other than your memory?

T076643

A That is correct.

MR. ROTHMAN: I take it that what you incorporate into such a thing as a work destruction program is a man who cleans out his files.

MR. BUTLER: It may include that but I am not going to talk about that.

MR. ROTHMAN: What are you talking about?

MR. BUTLER: I am talking about any distribution list to the public of California.

MR. ROTHMAN: But you have been talking about destruction policy for disposal judgment.

MR. BUTLER: I want to find out how it is carried out.

MR. ROTHMAN: He says in his judgment they get rid of documents from time to time.

BY MR. BUTLER:

Q Do you have any recollection of any destruction of any list which would show the distribution of public relations material from the communications section of the Tobacco Institute into California from the time that you have been with the Tobacco Institute?

A No, I do not.

Q So far as you know, all of those lists would still be at the Tobacco Institute, that is, the list showing the

T076644

distribution of public relations materials into California?

MR. ROTHMAN: He never said a list existed; you assume something.

BY MR. BUTLER:

Q Do you keep a list of the distribution of public relations materials?

A In some cases, yes.

Q Do the "some cases" depend on whether it is distributed directly by the Tobacco Institute or some hired independent contracting agency?

A No.

Q Do you hire independent agencies to distribute public relations material?

A Yes.

Q Can you tell me the names of some of those agencies?

MR. ROTHMAN: We are talking about agencies that distribute material into California or do you want agencies that distribute the material into other cities?

MR. BUTLER: I think it would lead to discoverable evidence if we have the list of the names of the agencies. I am only interested in those which go into California, but I think I am entitled to the names preliminarily.

MR. ROTHMAN: Let's suppose there exists an agency whose

T076645

sole function is to distribute material into the District of Columbia.

MR. BUTLER: I don't want it, but I want anything that will go into California.

MR. ROTHMAN: That, you are entitled to have and that you will have. Go ahead and answer, Mr. Kleopfer.

THE WITNESS: Tide Rock Corporation was one. Hill and Knowlton was another.

MR. ROTHMAN: May I talk to the witness?

MR. BUTLER: I would prefer not. I think we are getting an answer and I prefer that the answer be on the record.

MR. ROTHMAN: I am not going to tell him what his answer ought to be.

MR. BUTLER: I think it is fairly improper for you to whisper to him at this point.

MR. ROTHMAN: I am going to counsel him anyway.

MR. BUTLER: Let the record reflect that for the last approximately 45 seconds the answer was interrupted while counsel and the witness conferred.

BY MR. BUTLER:

Q Can you continue with the names of any other such agencies?

A I recall no others.

T076646

Q Where is Tide Rock located?

A Tide Rock was located in New York City.

Q For what reason were they employed?

A As public relations counsel.

Q For what particular publications were they employed for? What distribution of publications into California was Tide Rock Company employed?

A They were not employed for distribution of publications into California per se.

Q Just including California?

A Some of their work included California.

Q Tell me in each instance in which Tide Rock was employed, where there was information transmitted to California, if you can?

A I recall only one such incident.

Q Could you tell me what that one was?

A Distribution of a magazine article reprint.

Q Was that the True magazine article?

A It was an article from True magazine.

Q Do you remember the title of that particular article?

A No.

Q Was the article entitled, "To Smoke Or Not To Smoke, That Is Still The Question", by Stanley Frank?

T076647

A Yes.

Q How about Hill and Knowlton; for what were they employed by the Tobacco Institute; to send what publications into California?

A News releases. I do not recall any other.

Q During what period of time were they employed to send news releases into California and with the understanding that California is only part of the overall duties of Hill and Knowlton?

A I believe from about 1958 until 1968.

Q Do you have still within your possession a file dealing with the activities of Hill and Knowlton for the Tobacco Institute?

MR. ROTHMAN: I think the record ought to reflect, Counsel, that this witness did not come to the Institute until 1969. I am not quite certain how he was competent to testify as to what was done between 1958 and 1968. I think he is trying to reach over to help you with these answers. I seriously doubt there is any competency in that testimony.

MR. BUTLER: I am asking if he had a file in his possession

MR. ROTHMAN: But he told you that the activity of Hill and Knowlton was between 1958 and 1968. He didn't come to the Institute until 1969. I don't know how he came to answer that.

T076648

MR. BUTLER: He came in November of '67.

BY MR. BUTLER:

Q Do you have such a file in your possession?

A In part.

Q Why do you say "in part"? What is missing from it?

A Material that probably would have no pertinent value.

Q But other than material that would have no pertinent value, do you have a record dealing with those years, from 1958 to '68?

A In part.

Q With the exceptions that you just mentioned, those of no material value?

A Yes.

Q How do you define matters of no material value; just generally?

A ^{My} ~~His~~ own judgment rests on the likelihood of application to any possible future activity.

Q Were Hill and Knowlton, during the years that you were there, 1967 and '68, used for the distribution of just news releases?

A No.

Q What else were they used for?

A Within California?

T076649

* To correct stenographic error. WK

Q Yes.

A Nothing.

Q What else were they used for? What general area were they used for, other than news releases?

MR. ROTHMAN: He said within California, nothing.

MR. BUTLER: I want to find out generally what the area was and then put to the court whether it may be an area which might be of some influence in California. For instance, a press release to The New York Times, I think, might have some effect or a press release to a national magazine might have some effect.

MR. ROTHMAN: But you covered press releases.

MR. BUTLER: News stories, then. I just want to find out to see if the witness has any information dealing with matters which might be material in our presentation to the court. I don't intend to go beyond that particular question, but I think I am entitled to it.

MR. ROTHMAN: That is all right, go ahead.

BY MR. BUTLER:

Q In the area other than news releases, what was the other area of interest between Hill and Knowlton and the Tobacco Institute, dealing with public information?

A None within the State of California. Elsewhere,

T076650

certain publications.

Q Which publications?

A Booklets about tobacco.

Q Anything else?

A Not that I can recall.

(Brief recess period.)

BY MR. BUTLER:

Q What was the booklet about tobacco that was sent out by Hill and Knowlton, if you recall?

A I do not recall exactly which booklet.

Q Was it the article, "Cigarette-Cancer Link Is the Bunk", by Charles Golden?

A No.

Q Was it the same article by Stanley Frank?

A No.

Q Was it the True magazine article, "To Smoke Or Not To Smoke"?

A No.

Q Was it a reprint of an article appearing in the National Inquirer?

A No.

Q Do you have any general idea what the booklet was about?

A Yes.

T076651

Q Can you tell me?

A Part of a series of booklets about tobacco history and economy.

Q Were these articles similar to the one which I am showing you, being No. 36 for identification?

A Yes.

Q Were those simply sent into the states which bear the title, that is, the South Carolina booklet was sent into South Carolina and the one in Illinois to Illinois?

A Yes.

Q None of those were sent to California, to your knowledge?

A No, not to my knowledge.

Q Is there a contract covering the release of those particular publications?

A No.

Q Do you know who handled the distribution of the article, "Cigarette-Cancer Link Is The Burk"?

A No.

Q Were there any other agencies besides Hill and Knowlton or Tide Rock Corporation dealing with the releases and public information that you recall at this point?

A Could you clarify the phrase "releases and the public

T076652

information"?

Q I am trying to find the names of either public relations outfits or mailing organizations, public relations consultants, who have operated with the Tobacco Institute through your office during the periods of time in which you were vice president.

A I do recall one other public relations consultant during that time.

Q Who was that?

A Mr. Harold Brayman.

Q Where is he located?

A Wilmington.

Q Delaware?

A Yes.

Q For what purpose was he used, generally?

A Consultant.

Q In what field?

A Public relations.

Q What aspect of public relations?

A Any aspect.

Q Was he a specialist in one particular area?

A Not to my knowledge.

Q Is there a contract between Harold Brayman and the

T076653

Tobacco Institute?

A No.

Q Is there a letter agreement between Harold Brayman and the Tobacco Institute?

A No.

Q During what period of time was Harold Brayman used?

A As I recall, two to three years ago.

Q You do not know the purpose for which he was hired, other than just generally as a public relations consultant?

A I know of no other purpose.

Q Did he consult with you?

A Yes.

Q On what subject?

A Public relations.

Q What specific subject in public relations referring to the Tobacco Institute?

A No specific subject that I recall.

Q Was it dealing with any particular area of concern of Tobacco Institute dealing with the general problem of tobacco smoking and health?

A In part.

Q What was it?

A What was it?

T076654

Q What was the part of the subject dealing with smoking and health for which Harold Brayman was consulting?

A Part of the subject on which I consulted him had to do with smoking and health.

Q What aspect of it?

A I recall no particular aspect of it.

Q You just went to him and talked about tobacco and health generally, is that what you are saying?

MR. ROTHMAN: I think I have permitted you eight questions on it. The witness says he doesn't recall any particular aspect of it. I think now you are beginning to argue with the witness.

BY MR. BUTLER:

Q Were there any written memoranda of any sort or nature dealing with your contacts with Harold Brayman?

A There may have been.

Q Were there letters?

A There may have been.

Q Are there letters?

A I do not know.

Q Did you sign any letters to Harold Brayman?

A I may have.

Q Is it that you don't remember or you have no recollection of any such letters?

T076655

A I recall no specific letter.

Q I am not asking whether you recall any specific letters. Do you recall any letters going between you and Brayman?

A There may have been.

Q Are you saying that you don't recall?

A I do not recall whether or not there were letters between me and Mr. Brayman.

Q Do you have a file in your office dealing with the relationship with Mr. Brayman?

A I may have.

MR. ROTHMAN: I think the problem here is with the use of the expression, "I may have." That legitimately concerns counsel. I think you would be much better advised and fairer to Mr. Butler to say, not "I may have." If you have, say you have. If you do not have and, if you don't know, say you do not know. Those are the three possibilities.

BY MR. BUTLER:

Q Do you have such a file?

A I do not know.

Q I want to show you an article purporting to be certain remarks by William Kleefer, being identified as No. 115 in the record. Can you tell me whether that is, in fact, a true and

T076656

correct copy of the remarks which you made at that time and that place, being November 25, 1970, before the Richmond Public Relations Association at the Hotel George Marshall?

A It appears to be.

Q The statements that you made there interpreted your thinking on that particular subject with respect to the duties of the public relations representative in Washington, D. C.; is that correct?

MR. ROTHMAN: I object on the grounds that it is not relevant to the issue of jurisdiction.

MR. BUTLER: Can he answer it?

MR. ROTHMAN: No. I instruct the witness not to answer.

BY MR. BUTLER:

Q What is the Richmond Public Relations Association?

A To my knowledge, it is an association of professional persons in the city of Richmond, Virginia.

Q Have you ever given ~~any~~^{that} speech anywhere else other than that particular group?

A No.

Q Have you ever given the substance of this speech -- I am not limiting my question to an exact duplication -- but, in substance, anywhere else?

A Not that I can recall.

T076657

* To correct stenographic error. WK

Q Mr. Kioepfer, from time to time as part of your duties, you prepare press releases; is that correct?

A Yes.

Q Or supervise their preparation?

A Yes.

Q How were these press releases distributed?

A By mail or messenger.

Q Do you have a mailing list for the distribution of press releases?

A Yes.

Q Is that broken down by state?

A No.

Q With these press releases that you issue, do you pay particular attention to such newspapers as The Washington Post and The New York Times?

A Not particular attention, no.

Q By that you mean you don't attempt to have the public information made available specifically for those newspapers as opposed to other newspapers?

A That is what I mean.

Q Is that also true with respect to paid advertisements that you do not single out The Washington Post or The New York Times as opposed to other newspapers in order to place paid ads?

T076658

MR. ROTHMAN: The vice of that question is that it is too general.

BY MR. BUTLER:

Q As you view your job to the Tobacco Institute, is it important to you to reach those journals of public opinion which are influential?

MR. ROTHMAN: I think you meet some vices in that one, too. Suppose I object and you decide whether I am right. I think the question is too broad.

MR. BUTLER: I am trying to find out if, as he sees his job, he is attempting to influence public opinion by attempting to influence the public opinion makers.

MR. ROTHMAN: I am afraid I just don't know what you are referring to.

MR. BUTLER: I am sure he does.

BY MR. BUTLER:

Q In your experience as a public relations representative, do you try to reach every possible outlet of public communication?

MR. ROTHMAN: Don't you think we should now try to decide what we are talking about: a, what are we talking about and, b, when are we talking about?

MR. BUTLER: We are just talking generally.

T076659

MR. ROTHMAN: For example, if you are talking about Exhibit No. 96, I am sure he could not answer the way you are putting it. That would be true with almost any exhibit. The question is too broad and too general.

BY MR. BUTLER:

Q I show you a biographical note on Horace E. Kornegay, dated January 1972, and identified as No. 31. Would it be fair to say that that particular biographical note was prepared by your office?

A I do not recall that it was.

Q Does it appear to be?

A It does not appear to have been.

Q It does not appear to have been?

A That is right.

Q Do you send out, from time to time, any particular biographical data on Mr. Kornegay?

A I have done so.

Q Are copies of those particular biographical materials still available in your offices?

MR. ROTHMAN: I hate to keep interrupting you, Counsel, but I take it we are talking about sending them to California?

MR. BUTLER: That is right.

MR. ROTHMAN: Did you send Mr. Kornegay's biographies to

T076660

California?

THE WITNESS: I do not recall having sent those to California.

BY MR. BUTLER:

Q Would that include items sent under your direction and control, for instance, either by you or your assistant, Mrs. Duffin?

A Yes, it would.

Q Do you go to California from time to time?

A I have gone to California.

Q On business?

A Yes.

Q Can you tell me how frequently you have gone?

A I suppose half a dozen times during my working career.

Q Who do you make contact with in California?

MR. ROTHMAN: Just so we have it: I am not sure what the answer was. He said, "working career", and I don't know whether he means with the Institute or during his life.

MR. BUTLER: We are talking about here with the Institute.

MR. ROTHMAN: How many trips to California since he has been with the Institute on business; is that what you are saying?

T076661

MR. BUTLER: Right.

THE WITNESS: I recall two trips.

BY MR. BUTLER:

Q Who were those visits to?

A Meetings conducted by the American Medical Association.

Q In both instances?

A Yes.

Q Are those the only two visits that you have made to California for business for the Tobacco Institute?

A So far as I can recall, yes.

Q Where were the meetings with the American Medical Association that you have mentioned?

A One was in San Francisco. The other was in Newport Beach.

Q When were these, if you can recall?

A The former, I believe was in 1968. The latter, in 1972..

Q What did you do there?

A Listen to the delivery of scientific papers.

Q Is that all? Was that the job purpose for which you went? Was it to listen to scientific papers?

A Yes.

T076662

Q By whom?

A Scientific researchers.

Q Any particular ones?

A Are you asking me for the names of persons?

Q Did you go to listen to any particular speeches or papers delivered by any "scientific person"?

A No, I want to listen to any which were scheduled for delivery.

Q Did it include any which the Tobacco Institute had any specific interest by reason of the fact that the tobacco industry had sponsored any of the fundamental research dealing with the relationship between smoking and health?

MR. ROTHMAN: I am afraid that has lost me.

(The pending question was read by the reporter.)

MR. ROTHMAN: I am trying to decide how to deal with that question. I think I know what you are driving at, but I don't think you have done it too well. Would you, as a courtesy to me, take another crack at it?

BY MR. BUYLER:

Q Do you understand the question?

A No.

Q Were there any papers that were delivered at either of those meetings of particular interest to you, because they

T076663

were dealing with papers on smoking and health?

A Yes.

Q Do you recall what particular papers?

A No.

Q Did you make a written report of those visits to the American Medical Association?

A No.

Q Did you make an oral report to anyone with respect to those visits?

A No.

Q What did you hope to accomplish by attending those meetings?

MR. ROTHMAN: Which I object to because it is not relevant and I instruct the witness not to answer.

BY MR. BUTLER:

Q In what way were you carrying out the business of your employer, the Tobacco Institute, by attending those particular meetings?

A Obtaining information.

Q Is that all?

A Yes.

Q Just obtaining information in what field?

A Scientific research.

T076664

Q Yes, what field of scientific research? We could be here all day if you continue to be evasive.

MR. ROTHMAN: The witness is answering your questions. You are apparently becoming a little unhappy that he is not volunteering information.

MR. BUTLER: I recognize a skillful avoider of answers.

MR. ROTHMAN: That is not fair to the witness, Mr. Butler.

BY MR. BUTLER:

Q At any rate, were you there listening for papers dealing with smoking and health?

MR. ROTHMAN: He has answered now and I am convinced I have heard it three times. He said he went to conferences to listen to presentations of scientific material.

MR. BUTLER: But he has not identified the area of concern and I want to find out if it had to do with smoking or health.

MR. ROTHMAN: Go ahead. Did it have to do with smoking and health?

THE WITNESS: Yes.

BY MR. BUTLER:

Q Did you, as a result of those meetings, issue any press release or, first of all, did you issue any press release with respect to your visit to those meetings?

A No.

T076665

Q Did any of those articles have to do with the controversy involving the "smoking dogs"?

A No.

Q Does the fact that you know that it did not have anything to do with the area of the "smoking dogs" refresh your recollection as to what particular papers were delivered dealing with smoking and health at those particular conferences?

A No.

Q You just know that they weren't dealing with the "smoking and health controversy"; is that it?

MR. ROTHMAN: He answered that.

(Discussion off the record.)

BY MR. BUTLER:

Q How long were you in California on each of those two occasions?

A Two or three days.

Q On each occasion?

A Yes.

Q Do you attend all of the meetings of the American Medical Association with respect to gaining information on the matter of smoking and health?

A No.

(Discussion off the record.)

T076666

BY MR. BUTLER:

Q Were there any papers presented at either of those meetings by scientists who had been sponsored, in part, by the Council for Tobacco Research, USA?

MR. ROTHMAN: Objected to on the grounds that it is not relevant to the issue of jurisdiction and I instruct the witness not to answer.

BY MR. BUTLER:

Q Do you attend other medical meetings other than meetings of the American Medical Association dealing with the area of smoking and health?

MR. ROTHMAN: In California?

MR. BUTLER: I want to know generally.

MR. ROTHMAN: I must tell you it is easier to let him answer than to fight you. I don't think that it is relevant at all. Go ahead and try to answer it.

THE WITNESS: I have.

BY MR. BUTLER:

Q Can you tell me what meetings?

MR. ROTHMAN: No, I don't think he can. I object on the grounds that it is irrelevant to any issue of California jurisdiction. Suppose he attended a meeting in China. Is that relevant to California? I cannot conceive of the relevancy.

T076667

MR. BUTLER: I have to have the answer before I can determine relevancy. These are broad discovery-type proceedings and I believe I am entitled to questions and answers in that regard.

MR. ROTHMAN: You can use that argument to any question that you ask.

MR. BUTLER: Not any question, but certainly questions dealing with this man's activities.

MR. ROTHMAN: The question that is presently pending is: what meetings does he attend outside of the State of California?

MR. BUTLER: Right.

MR. ROTHMAN: I advise you that that is not relevant and I am not going to permit the witness to answer.

BY MR. BUTLER:

Q I show you a document now identified as No. 127, and ask if that is a true and correct copy of statements which were given by you at the time indicated, on September 16, 1971, dealing with public relations in the Nation's Capital?

MR. ROTHMAN: The document, 127, appears to me to indicate that the remarks were given in the District of Columbia.

MR. BUTLER: Did I say something different?

MR. ROTHMAN: No, you didn't say anything different.

THE WITNESS: That is what it seems to be.

MR. ROTHMAN: While you are examining the document, I

T076668

think to keep the record clear, Exhibit No. 127 is another in the category of documents which, in our judgment, requires some explanation as to how they came into the possession of the plaintiff inasmuch as they are documents that were not submitted to anybody, any place, nor have they been submitted for distribution. So, that matter of how they have come into the possession of the plaintiff is a matter of importance as it relates to the authenticity and the propriety of their being used. I thought, since you are raising it, I think we ought to again raise that point.

BY MR. BUTLER:

Q Mr. Klepfer, you made this particular speech which is covered in No. 127; is that correct?

A Yes.

Q Then, were copies of your speech made as far as you knew?

A Not that I recall.

Q Is it possible that copies were made for distribution?

A I cannot think of any purpose in having made copies.

Q I don't care whether you can think of any purpose, but were copies made?

A None that I can recall.

Q Does that appear to be a copy?

T076669

A Yes.

Q Have you ever seen copies around your office, that is, around the Tobacco Institute?

A I have seen a copy.

Q Just a copy?

A Yes.

Q Is this the copy?

A No, that is not the copy.

Q Where did you see the copy around the office?

A In my file.

Q Where do you keep your file?

A In the office.

MR. ROTHMAN: You will get there, Mr. Butler.

BY MR. BUTLER:

Q Within your own room, is that what you would say?

A No.

Q Whereabouts?

A In the Institute files.

Q In the general filing section, is that what you are saying?

A Yes.

Q To whom did you deliver this particular talk?

MR. ROTHMAN: Pardon me?

T076670

BY MR. BUTLER:

Q To whom did you deliver this talk?

MR. ROTHMAN: I lost the last word.

BY MR. BUTLER:

Q To whom did you deliver this talk?

A To an assembly of public relations executives in the District of Columbia.

Q Where?

MR. ROTHMAN: What hotel do you mean?

MR. BUTLER: Just where.

THE WITNESS: It was in a hotel.

BY MR. BUTLER:

Q Where?

A I do not remember which hotel.

Q Did the group have a name?

A I do not remember.

Q Did you do it by invitation?

A Yes.

Q Did you intend the remarks to be confidential?

MR. ROTHMAN: Just a moment. Are you asking him whether he intended the document to be confidential or the remarks to be confidential?

MR. BUTLER: It is very clear about the remarks.

T076671

MR. ROTHMAN: I am not concerned with the remarks. I am trying to find out how our files got out of our office.

MR. BUTLER: I think I am entitled, since you have raised it, to know whether he considered what he said in public as confidential.

MR. ROTHMAN: That is not relevant. If those documents were removed from the Institute improperly, what he intended with respect to the confidentiality of the remarks is not at all relevant.

MR. BUTLER: You could be mistaken with respect to the fact that they have been removed or not. Because you have raised that, I want to find out whether the gentleman was saying something confidential with respect to it.

MR. ROTHMAN: I don't think that is relevant and I will instruct him not to answer it. But, we would be delighted for you to explain how those documents got out. You can explore that as long as you like.

BY MR. BUTLER:

Q Have you made this speech on any other occasion other than September 16, 1971? I include in that question, in substance or effect, the need for public relations in the Nation's Capital.

MR. ROTHMAN: I don't know what "in substance or effect"

T076672

REURNS.

MR. BUTLER: What I am trying to do is ask him whether he has dealt with the general subject of public relations in the Nation's Capital in any similar manner in any address or remarks to anyone else other than on this particular occasion.

MR. ROYMAN: Outside of California or inside of California?

MR. BUTLER: First of all, let me see if he ever did it.

THE WITNESS: Not that I recall.

BY MR. BUTLER:

Q In making this particular speech, did you have to get clearance of any sort from the then president of the Tobacco Institute?

A No.

Q Is it within your authority to make these statements without approval of anyone in the Tobacco Institute; is that correct?

A It was within my authority to make that statement under those conditions.

Q I show you document No. 120, and ask you if you will identify it for the record.

A What is your question with respect to this?

Q First of all, identify it for me. What is it?

T076673

A It is another document that appears to be in the same category that we have talked about up to now, Mr. Butler.

(Discussion off the record.)

BY MR. BUTLER:

Q Can you identify that particular document?

A It appears to be a copy of certain remarks made in part by me in Pittsburgh, Pennsylvania.

Q Can you tell me the origin of this particular document?

MR. ROTHMAN: The origin of the document?

MR. BUTLER: That is right.

MR. ROTHMAN: Perhaps you ought to tell us.

BY MR. BUTLER:

Q Was this prepared as a result of your efforts?

A The remarks which are attributed to me in the document were prepared as a result of my efforts.

Q This appears to be a true and correct copy of the remarks delivered on that occasion; is that correct?

A It appears to be.

Q With respect to this particular document, is this document kept in your files or the general files of the Tobacco Institute?

A A document like this is kept in the general file.

T076674

Q Are you saying that this is only one of a kind of the documents which are kept in the file, or have copies of this particular document been made?

A Copies of this document have been made.

Q Were these distributed generally at the time of the occasion of your meeting with news media representatives on December 9, 1971?

A As I recall, they were distributed to persons with whom I met.

Q Have similar background remarks been given to meetings with other news media representatives on other occasions?

MR. ROTTMAN: I don't think I can permit that question. It is too broad. In fairness to you, I don't want you to take an answer to a broad question on that and then try to explain No. 127. I don't think, in the light of the record that is now being made, you can generalize that way because we are on a very serious subject.

MR. BUTLER: Do you direct him not to answer that last question?

MR. ROTTMAN: I don't want to do that. If you can make it more specific, I will let him answer.

BY MR. BUTLER:

Q As a part of your duties, do you meet with news media

T076675

representatives such as the meeting of December 9, 1971?

A Yes.

Q Let me see if I can determine what was the purpose of the meeting in Pittsburgh.

A To provide information.

Q It says news media representatives; who were they?

A I don't recall.

Q Do you know the occasion for your going to Pittsburgh? Was there some general convention or was there some organized meeting of some nature that you were attending or had you called in just local Pittsburgh news media representatives for discussion of the items which are covered on this Exhibit No. 120?

A The latter.

Q Have you, on occasion, gone into other cities in the United States and made similar background remarks?

MR. ROTHMAN: I think that is not relevant and he need not and should not answer it unless your question is pertaining to the State of California, in which case, I withdraw the objection.

MR. BUTLER: Are you directing him not to answer?

MR. ROTHMAN: Same objection, same instructions.

BY MR. BUTLER:

Q Have you had background meetings with media

T076676

representatives of national publications in which you have delivered similar background remarks?

A No.

Q Have you ever met with representatives of Time or Newsweek in connection with the delivery of information on the background of smoking and health?

A No.

Q Have you ever met with the representatives of Time and Newsweek in any official capacity as a vice president of the Tobacco Institute?

A Yes.

Q In what capacity and under what circumstances?

A To respond to an inquiry.

Q Dealing with what subject?

A Tobacco.

Q Just tobacco generally or was it more specific than that?

A Tobacco generally.

Q When was the meeting?

MR. ROTHMAN: What meeting?

MR. BUTLER: I said when was there a meeting? When was it?

MR. ROTHMAN: I don't know if there was a meeting or not.

It could have been a telephone inquiry.

T076677

MR. BUTLER: I think he said there was a meeting.

BY MR. BUTLER:

Q Was there a meeting?

A Yes.

Q Where was the meeting?

A In Washington, D. C.

Q When was the meeting?

A I do not recall.

Q You can't tell us what year it was?

A No, I cannot.

Q Was the meeting at the offices of the Tobacco Institut

A No, it was not.

Q Was it at the offices of either Time or Newsweek?

A No.

Q Can you tell me where the meeting was held?

A No.

Q Can you tell me who the representatives of Time or
Newsweek were?

A No.

Q Can you tell me what was the nature of the inquiry
besides tobacco? What specifically were you answering to these
representatives?

A They were not representatives.

T076678

Q What were they?

A There was one person.

Q Do you know the name of that person?

A I do not recall the name.

Q Who did that one person represent, Time or Newsweek?

A Newsweek.

Q What was said by you and what was said by him to the best that you can recall?

A I do not remember.

Q You have no recollection of what was covered in that meeting at all?

A I do not remember the particulars of the meeting.

Q You understand I am not asking for an exact word-for-word discussion, but what I want to know, if you recall, is the substance and effect of the conversation that you had at that time.

A I recall that the person asked a number of questions about tobacco.

Q Did he ask about the relationships of tobacco and the tobacco companies and the activities of the Tobacco Institute?

A I do not recall that he did.

Q Have you ever met with a man by the name of Martin Mintz?

T076679

A Yes.

Q Have you met with him dealing with the subject of tobacco and health?

A I do not recall that I have.

Q Have you met with a man by the name of Jack Anderson dealing with the subject of tobacco and health?

A I believe not.

Q Have you from time to time met with members of Congress dealing with the subject of tobacco and health?

MR. ROTHMAN: California members?

MR. BUTLER: First of all, I want to know if he has met generally. If he hasn't, then we will leave it.

THE WITNESS: No.

BY MR. BUTLER:

Q Senators?

A No.

Q Representatives of Congressmen?

MR. ROTHMAN: Wait a minute. You have asked if he met with members of Congress. He said, "No." That includes both Houses. Then you asked if he had met with Senators. He said, "No." Then you asked if he met with the House.

MR. BUTLER: Now, representatives of the Congressmen.

By that I mean assistants to the Congressmen.

T076680

MR. ROTHMAN: I see.

THE WITNESS: No.

BY MR. BUTLER:

Q I show you No. 94 for identification which has been previously identified as a kit supplied to various news media including newspapers from California. Do you recognize it as such?

A Yes.

Q Was that prepared under your supervision and direction?

A Yes.

Q It appears to be that it is in three parts; is that correct?

A Yes.

Q Are these released at the same time or are these released at different periods of time?

A The latter.

Q Is this part of a kit upon which there will be other additions from time to time?

A Yes.

Q Are these released contemporaneously with the release of information from the United States Public Health Service?

MR. ROTHMAN: I am sorry. I did not understand the

T076681

question.

BY MR. BUTLER:

Q Do you understand? Are you familiar with the fact that there have been supplements to the Surgeon General's report of 1964 issued by various agencies of the United States Government?

MR. ROTHMAN: We are talking jurisdiction now and you are talking substance and merit. I am not sure I follow the question.

MR. BUTLER: I think the substance of the contact becomes important even if it is in California, because the argument might be made that the substance is of slight significance. If you are willing to say that the substance of these articles are, in fact, significant, I would be willing to forego any questions in this area.

MR. ROTHMAN: I see. I take it that the smile on your face suggests that the remark was facetious.

MR. BUTLER: Are you willing to stipulate?

MR. ROTHMAN: I don't understand the use of the term "significant". Seriously, I really don't know what the relevancy is.

BY MR. BUTLER:

Q Is there some particular plan attached to the timing

T076682

of the release of these portions of the kit identified as No. 947

A No.

Q If they are released periodically, what determines when they are released, if anything?

A It's just on when the work is finished.

MR. ROTHMAN: I am sorry, Mr. Butler. What do you mean, "if they are released periodically"?

MR. BUTLER: He said they had been released periodically. I am trying to determine what is the criteria for the release of an additional portion of this particular kit.

MR. ROTHMAN: What is the criteria, assuming there is a criteria?

MR. BUTLER: Right.

MR. ROTHMAN: He can answer that, if he is able.

THE WITNESS: The availability of the information contained

BY MR. BUTLER:

Q Is it generated from within the Tobacco Institute itself, or is it intended as an answer to remarks by others dealing with the subject of smoking and health?

A Neither.

Q One of them is called, "Smoking and Health, The Counterevidence Introduction". Was that particular section

T076683

intended to counter any particular or specific viewpoint dealing with the problem of smoking and health?

A No.

Q Attached to the articles are a list of references in addition to the kit. Do you, upon request, also send copies of those particular references to the mailing list in California?

A No.

Q Do you have copies of those available at the Institute?

MR. ROTHMAN: Copies of what?

MR. BUTLER: Of the references.

THE WITNESS: I believe so.

BY MR. BUTLER:

Q You don't know, though?

A In each case, I cannot be certain.

Q Did you personally prepare these particular sections of the kit or did someone else do so?

A Both.

Q Who else assisted you? Who else within the Institute assisted in the preparation?

MR. ROTHMAN: Assisted in preparing the kit? What is the relevancy of that?

MR. BUTLER: It may lead to relevant information dealing with the substantive portion of that particular document because

T076684

it has been testified to. I believe that this kit has been sent to a fairly substantial number of people in and attached to the newspaper business in California.

MR. ROTHMAN: Supposo he said that "Mary Smith" helped prepare it. What would that mean?

MR. BUTLER: If we get into the problem of the substantive effect of what you do in California, it may be necessary at a future date to pose that particular question. I just want to dispose of that particular person. I want to find out who is the assistant.

THE WITNESS: Mrs. Duffin and Mr. Panzer.

BY MR. BUTLER:

Q You mentioned Mr. Panzer. Who is Mr. Panzer?

MR. ROTHMAN: We have covered that three times, Counsel.

MR. BUTLER: Not with this one. I don't believe with this witness.

BY MR. BUTLER:

Q Who is Mr. Panzer?

A He is an employee of the Tobacco Institute.

Q Does he work under your direction?

A No, ^{he does *} ~~he does not~~.

Q Just tell me what generally are his duties as they relate in any way to your duties?

T076685

* To correct stenographic error. WK

A His duties do not really relate to my duties.

Q Does he deal in legislative representation?

MR. ROTHMAN: Do you understand what "legislative representation" is? I assume you mean: does he represent the Institute before a legislative body?

MR. BUTLER: That is a fair interpretation.

THE WITNESS: I don't believe so.

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Milton
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T076686

ac 1

Q Is it true Mr. Panzer is an assistant to Mr. Mills?

A Yes.

Q They deal generally with matters dealing with the Federal Government as opposed to State Government?

A I believe so.

4/17/73

Milton

Q As a Public Relations representative of the Tobacco Institute, do you from time to time call California, telephone California?

A Do I make telephone calls? Is that the question?

Q To California, right.

A I believe I have done so.

Q In connection with Tobacco Institute business?

A Yes.

Q Can you tell me to whom you telephoned in California?

A I don't recall the name of any person that I have telephoned in California.

Q Is it that you do it so rarely?

A Quite rarely.

Q But you know that you make phone calls, but you can't remember to whom?

A Yes.

Q Do you remember the subject matter of the telephone calls?

T076687

ac 2

A No, not all of them.

Q I don't want all of them. Just give me those that you remember.

A I remember responding to inquiries from news media.

Q Anything else?

A Yes. I remember discussing a certain public relations activity.

Q What public relations activity?

A Communication with news media representatives.

Q What subject?

A Tobacco.

Q What aspect of tobacco?

A A number of aspects of tobacco.

Q What particular number of aspects did you deal with?

A Economics, history, health.

Q What organizations were you dealing with in these phone conversations, if you remember, even though you don't remember the individual?

MR. ROTEMAN: Excuse me. Just to help you, Mr. Butler, so we don't waste all day on this, this telephone conversation that you are trying to get to, my understanding is for your benefit that these are conversations with Braun and Company in respect to their activities outside of California.

T076688

ac 3

I think you would probably want to know that so you can get right to it. That is all we are talking about here. We are not talking about anything beyond that. But you haven't gotten to it.

MR. BUTLER: He doesn't need Life Savers, obviously.

MR. ROTHMAN: No. You have a misunderstanding of the facts, if I didn't tell you that.

MR. BUTLER: He is perfectly capable of telling me the facts.

MR. ROTHMAN: He is trying to respond to your questions. Your questions are not bringing out the answers.

MR. BUTLER: No, because he is very reluctant and evading the answer.

MR. ROTHMAN: That is not a fair statement. He answered your questions the best he can. I think he is answering them correctly. I am not playing games with you.

BY MR. BUTLER:

Q What aspects of health were you dealing with and what organizations were you dealing with?

A I recall responding to inquiries from news media.

Q Such as what, the Los Angeles Times.

A I cannot recall the name of any medium.

Q Were they newspapers?

T076689

ac 4

A They may have been.

Q Were they television stations?

A They may have been.

Q Were they radio stations?

A They may have been.

Q You dealt with economics and health? What did you have to say with respect to economics and health?

A I do not recall.

Q Did you ever discuss anything in California with anybody dealing with something called the Watson Initiative?

A I have no recognition of that expression.

Q Did you know that there was an initiative in California dealing with the replacement of tax on real property with an additional tax on cigarettes?

A Yes.

Q Did you discuss that particular initiative proposition with anybody in California?

A No.

Q Did you ever discuss that particular proposition with anybody from California in Washington?

A No.

Q Did you have a discussion with Braun and Associates or Braun and Company on the telephone?

T076690

A Yes.

Q Do you remember who particularly you discussed any matters with? Mr. Delknet?

A No. I do not recognize that name.

Q Mr. Maloy?

A No. I do not recognize that name.

Q Mr. Haffner?

A No. I don't recognize that name.

Q Was it a Mr. Braun himself, T. W. Braun?

A I believe I have spoken with Mr. Braun on the telephone.

Q Did you also discuss something with Mr. Bowman Gray?

A Yes.

Q Who is Mr. Bowman Gray?

A Mr. Bowman Gray, whom I remember having had a discussion with, is the late Chief Executive of the R. J. Reynolds Tobacco Company.

Q Was he in California?

A Not to my knowledge.

Q Did you discuss anything with Mr. Bruce Nathan?

A Yes. I remember Mr. Nathan.

Q Is that the one you had the phone conversations with in California?

T076691

ac 6

A I believe so.

Q Also Mr. Clifford Miller?

A I do not recognize that name.

Q Tell me the substance or nature of the conversations with Mr. Bruce Nathan and with Mr. T. W. Braun.

MR. ROTHMAN: Have we established -- you have gone around so many names here -- that Nathan was in California with Braun?

MR. BUTLER: Mr. Nathan was with T. W. Braun. Isn't that correct?

MR. ROTHMAN: I am trying to get the record straight. I think you are correct. But is your present question you want the substance of the conversation that was held with Mr. Braun and Mr. Nathan in California?

MR. BUTLER: Right.

MR. ROTHMAN: Wherever Mr. Kiepfer was. Is that right?

MR. BUTLER: Right.

MR. ROTHMAN: Let's see if we can establish when that conversation took place and see what we are talking about. You haven't asked that. Are you going to?

BY MR. BUTLER:

Q Do you know when the conversations took place?

A To the best of my recollection they would have been in 1971 and 1972.

T076692

ac 7

Q What were they dealing with?

A An assignment which I had given to the Braun Company.

Q Dealing with what?

A Meetings in a number of States with news media representatives.

Q Covering what subject?

A Tobacco, tobacco economics.

Q Tobacco and health?

A Tobacco history, tobacco and health.

Q Was there some formal presentation that you gave to them dealing with these presentations that they in turn would deal with the news media?

A No.

Q Did you send them any written communications?

A I believe so.

Q Do you have copies of those communications available?

A I may have.

Q Can you tell me the general nature of the assignment other than the generic description in terms of tobacco, economics and health?

MR. ROSEN: Counsel, I have tried to help you before. I am telling you again that these conversations did not deal with any activity in California. I keep telling you that.

T076633

MR. BUTLER: He doesn't seem to want to answer what the subject matter was. He gives very general answers.

MR. ROTHMAN: I think the reason for the problem now is that I have consistently told you that that which goes on outside of California in our judgment is not relevant.

I don't have any objection to your getting to this inquiry except that it is taking a laborious period of time and it will ultimately lead to naught.

But in order to simplify it, you want Mr. --

MR. BUTLER: I would suggest you direct him to tell me what it was about.

MR. ROTHMAN: Tell him what the assignment was. That will solve it. Is that what you want?

MR. BUTLER: Right.

THE WITNESS: To help make arrangements for my discussions of tobacco with news media representatives.

MR. BUTLER: Where?

THE WITNESS: I will recall the places to the best of my ability with the understanding that my recollection may not be thorough. Oklahoma City, Tulsa, Phoenix, New Orleans, Cheyenne and I do not recall others.

MR. BUTLER: Were the conversations that you had dealing with that subject with Mr. Nathan or with Mr. Braun, or both?

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MR. ROTHMAN: To which I will now object on the grounds it is obvious this cannot lead to relevant material.

MR. BUTLER: I want to find out if he had any discussions with either Mr. Nathan or with Mr. Braun dealing with any other subject other than that.

MR. ROTHMAN: But you didn't ask him that. Is that the present question?

MR. BUTLER: Right.

MR. ROTHMAN: Do you understand the question?

THE WITNESS: Yes. I do. I do not recall having had discussions with them other than what I have attempted to describe.

MR. BUTLER: I want to break for about 10 minutes.

(Brief recess.)

BY MR. BUTLER:

Q Mr. Kloepper, perhaps you can assist me with this. In item No. 22 for identification, Mr. Frederick Panzer is identified as an assistant vice president for Public Relations. Would that indicate to you that he was in the Public Relations Department of the Tobacco Institute at that point?

A Yes. It would.

Q At that time was he under your direction?

A Yes.

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Q When did he move from that?

A In 1972, last year.

Q At that time were his duties more in the area of Public Relations as opposed to lobbying?

A His duties were solely in Public Relations.

Q Would that exclude representation of views before governmental bodies?

A Yes.

Q I show you a series of three documents called the Cigarette Controversy and were these prepared under your direction?

A Yes.

Q Were they mailed by an outside mailing outfit?

A In part, yes.

Q What was the name of that?

A I do not remember the name.

Q Is it a Washington, D. C. outfit?

A As I recall it was a company in the metropolitan area of Washington, D. C.

Q Did you use them only for this particular mailing?

A I believe so.

Q Do you know the numbers of documents which were mailed?

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MR. ROTHMAN: I don't think that is relevant, counsel, on the same grounds we discussed earlier. I have no objection to your inquiring as to how many of those, if he knows, went into the State of California. Beyond that I don't think there is any relevancy to the question as it relates to jurisdiction.

MR. BUTLER: Are you objecting to him answering first of all the numbers?

MR. ROTHMAN: I am saying to you that if the question is interpreted to mean how many were printed for distribution in California, if he knows I would not object. But asking a general question as to how many were to be printed or distributed generally, I think that is not relevant.

MR. BUTLER: Except that this particular witness will not give an answer unless he remembers exactly or it appears to me at least that he is in that frame of mind.

I suggest that I am entitled in this area to find out if he knows generally how many were mailed and generally how many into California.

MR. ROTHMAN: I don't have any objection to the second question. But I won't permit the first.

BY MR. BUTLER:

Q Do you know generally how many were mailed into California?

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A No. I do not.

ac 12

Q You cannot approximate in any degree?

A No. I cannot.

Q Would you say as many as 10,000?

MR. ROTHMAN: I think the answer is he cannot estimate how many went into California. From then on in we get into a guessing game.

MR. BUTLER: Except that he has some information. If I guessed it, that would be a guess. If he gave an opinion, it would be an estimate.

MR. ROTHMAN: I don't know if that is true or not. I don't know if his judgment is any better than yours.

BY MR. BUTLER:

Q Do you have any estimate at all as to how many went into California?

A No.

Q Can it be determined from any records that you have or which are available to you?

A I don't know whether it can.

Q Can the cost of the total mailing be determined?

MR. ROTHMAN: Can the cost --

MR. BUTLER: of the total mailing be determined?

MR. ROTHMAN: I submit that is not relevant to the issues.

T076638

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MR. BUTLER: To the extent that California would be a representative sample of the total amount that were mailed.

MR. ROTEMAN: Do you mean you arbitrarily based on some sort of a population figure or something, figure out what went into California?

RE MR. BUTLER:

Q Were they mailed to the population generally or were they mailed just to news media in California?

A Some copies were mailed to persons generally throughout the country.

Q How was that determined? Was it a random sampling? Was it taken from some particular list available to the mailing company?

A The latter.

Q Do you remember any generic or specific description of that particular list?

MR. ROTEMAN: I gave you the exhibit number.

MR. BUTLER: No. You gave me a list of those to whom it was mailed in the media. Evidently it was mailed to people other than media representatives. I am trying to find out the nature of the list which was used.

MR. ROTEMAN: Let's see if we have this correct. My understanding is -- what is that exhibit number?

T076699

ac 14

MR. DAN: 5-B.

MR. ROTEMAN: You asked us to supply you with any list we had with respect to the mailing. That is the list we had. We supplied it.

MR. BUTLER: He has testified that there was mailed to the general population based on some sort of a representative list supplied by the mailing company. I am trying to find out what that particular representative list was because it deals very succinctly with the problem of jurisdiction.

MR. ROTEMAN: I don't understand his testimony to be with that. But you stay with it.

BY MR. BUTLER:

Q Was there such a list?

A I do not recall ever having had a list of addressees as such.

Q No. I understand that you may not have had it in your possession, but as the one in charge of directing this particular publication into various States there was a type of list or generic type of list dealing with the public generally and there was a mailing mailed to those people in California. Isn't that correct?

MR. ROTEMAN: I think you have assumed something in that question. Mr. Reporter, may I have it?

(The pending question was read by the reporter.)

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MR. ROSEMAN: There is no evidence that I understand that he directed the publication in the States. He said it was done by a mailing company. I didn't understand him to say that he directed it. He may have.

MR. BUTLER: The mailing company was operating under your direction and control. Isn't that so?

THE WITNESS: Yes.

BY MR. BUTLER:

Q To the extent it was operating under your direction and control you directed the mailing to areas other than just to news media and it went to certain type of people within the population at large other than news media. Isn't that correct?

A That is correct with the exception of the word "areas." I do not recall that I specified areas.

Q Do you know any generic description of the type of people to whom that publication was sent? For instance, was it sent to doctors?

A I cannot give you with certainty the identification of any particular type of person. As I recall, I chose among types of persons whose names were available to the mailing company.

Q Did they supply you with a written list of the types

T076701

of persons?

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A I believe so.

Q Do you still have a copy of that list?

A I don't know.

Q Do you have any recollection of any of the types which were on that list?

A No. I do not.

Q Can you tell me with any degree of certainty that doctors were not included?

A No. I can't.

Q It is true that doctors received this document called The Cigarette Controversy?

A I could not know whether doctors did.

Q Who would know within your group?

MR. ROTEMAN: Just to keep this in track, you are talking about who would know whether doctors in California --

MR. BUTLER: Within the Tobacco Institute.

MR. ROTEMAN: You have got to restrict it to California now?

MR. BUTLER: That is right. I want to make clear to you. The last answer that you gave, you said that you don't know whether doctors received it. Do you intend to state with that that it may have been sent but you don't know whether they

T076702

received it?

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THE WITNESS: It is my intent to state that I do not remember whether I directed that it be sent to physicians as a type of person.

BY MR. BUSHNER:

Q Is there someone within the Tobacco Institute that would know that answer other than yourself?

A No.

Q Could you determine from your records approximately how many of these documents were mailed to the general population within California?

A No.

Q Is there some reason why not?

A Yes.

Q What is that?

A The reason is that I do not have a record that would disclose that to me.

Q However, is the record of the mailing company, even though you can't recall the name, that is still available to you, isn't it?

A The record that may be available to me -- I do not know whether it is -- would indicate the types of persons to whom the pamphlet was mailed without an indication of who they

T076703

ac 18

are, or where they are.

Q Could you get a breakdown from the mailing company as to their charges for any particular portion of the mailing?

A Did I get?

Q Could you?

A I could ask. Whether they could provide, I do not know.

Q I show you a document known as Exhibit 154, Scientist: Question Smoking and Health Claims, Proceedings of the New York Society of Security Analysts, bearing on the back cover additional information, write to the Tobacco Institute. Was that prepared under your direction?

A The document as it appears was. Yes.

Q Where was it prepared?

A I believe it was printed in New York City.

Q Was it mailed to anybody in California?

A I do not know.

Q How was the distribution arranged of that particular document?

A I do not recall the details of the arrangement. I do not recall how it was arranged.

Q Other than the details, can you tell us generally how it was mailed? Was it in fact mailed to anyone?

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A Yes. I recall that I arranged and directed a mailing to members of associations, of security analysts, in the United States and to science writers in the United States.

Q So that would include science writers such as the science writers for the Los Angeles Times?

A I do not know for a fact.

Q But would you assume so, based on your experience?

MR. ROTEMAN: I object and instruct him not to answer.

BY MR. BUTLER:

Q Did it include security analyst associations in the State of California?

A I do not know.

Q Do you know where that particular list or distribution would be?

A No.

Q I show you Plaintiff's Exhibit 5-B, presumably a list of named distributees of certain publications of the Tobacco Institute and I want to take a look at it and ask you if you recognize it as such.

A A few of the names which I read in this document are known to me.

Q Does the list appear to you to be the list of distributees of publications such as Smoking and Health Claims

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from the Tobacco Institute in the State of California?

MR. ROTEMAN: Counsel, that was specifically given to you in response to your request for a mailing list of "The Cigarette Controversy."

MR. BUTLER: That is understood. But I want to find out if it is also the list used for the distribution of the Smoking and Health Claims.

MR. DAN: Exhibit 154.

MR. ROTEMAN: You want to know if the same list used to put out Exhibit 4 was used to Exhibit 154?

MR. BUTLER: In whole or in part.

MR. ROTEMAN: Okay.

THE WITNESS. I do not know.

BY MR. BUTLER:

Q Is there a list available showing to whom the document "Smoking and Health Claims" was mailed?

A I don't know.

Q If there was such a list, where would it be?

A In the general file at the Tobacco Institute.

Q Usually and ordinarily, do you keep such a list?

A Ordinarily, no.

Q Do you have general instructions with respect to the mailing of such pamphlets such as 154 to the people who

T076706

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work in your department?

A Yes.

Q Would it include a reference to the names which were also mailed the document called "The Cigarette Controversy"? In other words, would you tell your employees or the people that work under you to use the list for which we use The Cigarette Controversy list?

MR. ROTEMAN: Is the question did you do that or would you do that? If it is would you do that, it is meaningless. If it is did you do that, I have no objection.

MR. BUTLER: I am trying to find out if there is a custom with respect to what he would usually do in that regard because he says that there is no such specific list for this particular document.

MR. ROTEMAN: I don't think he said that. He said he didn't know there was such a list.

MR. BUTLER: My understanding is there is no list kept. Is that correct?

THE WITNESS: As I recall your question, it was do I ordinarily keep a list of persons to whom a document of this kind was sent.

BY MR. BUTLER:

Q Your answer was no?

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ac 22

A The answer was no.

Q But is there any way of ascertaining to whom that particular document was mailed, based on your usual custom and practice in the office for mailing documents such as 154?

MR. ROTEMAN: I don't understand the question. I have no objection to you asking him if he can ascertain to whom 154 was sent in California. That is a question which is proper in my judgment. I don't have any objection to that.

MR. BUTLER: He says he cannot. Is that correct? You cannot ascertain to whom it was mailed?

THE WITNESS: I said I do not know whether I can ascertain those facts.

BY MR. BUTLER:

Q How would you attempt to ascertain it?

A By examination of the Institute files.

Q What would you expect to find there that would help you ascertain it?

MR. ROTEMAN: Not what you would expect to find, what might you find?

MR. BUTLER: With that correction, could you answer it?

THE WITNESS: Yes. It is possible that I could find a list of persons to whom the document was sent.

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BY MR. BUTLER:

Q Would that be by reference to a distribution list which is usually and ordinarily used for the mailing of pamphlets into California?

A No.

Q For instance, would you have a distribution which would say Science Writers?

MR. ROTEMAN: Mr. Butler, would it help you at all if I said to you we will make every effort to search to see if we can find you a list if one exists?

MR. BUTLER: It would be very helpful if you would do so. Thank you.

MR. ROTEMAN: The answer is we will do that.

MR. BUTLER: That would include also Security Analysts?

MR. ROTEMAN: Yes.

BY MR. BUTLER:

Q Was it also mailed to brokerage firms? I just want to find out generally. We have said security analysts, we have said science writers. I want to find out if it was also mailed to brokerage firms.

MR. ROTEMAN: We will supply you with whatever information we have on whomever it was sent.

MR. BUTLER: Can you let him answer the question? I am

T076709

ac 24

not doubting that.

MR. ROTHMAN: Yes.

THE WITNESS: To the best of my knowledge, it was sent only to persons.

BY MR. BUTLER:

Q Individuals?

A Yes.

Q But would that include also individuals within brokerage firms?

A I do not know.

MR. BUTLER: Would you mark this for identification?

(The document referred to was marked Plaintiff's Exhibit No. 155 for identification and is attached hereto.)

xxx

BY MR. BUTLER:

Q Making reference to Plaintiff's Exhibit No. 155, do you recognize that the statement described there is to Joseph F. Cullman, III, Chairman of the Executive Committee of the Tobacco Institute, Inc.?

A Yes.

Q Did he appear before the committee on Interstate and Foreign Commerce, United States House of Representatives, as a representative of the Executive Committee of the Tobacco Institute?

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A Yes.

Q At that point did you have anything to do with the reproduction of his testimony for public information and dissemination?

A I believe not.

Q Do you know where that particular document was prepared?

A As I recall, the document was prepared by Mr. Callman's company.

Q The Phillip Morris Company?

A Yes.

Q Is it available at the Tobacco Institute or through the Tobacco Institute in any way?

A Yes.

Q How?

A To persons who request document.

Q How do they know about it? Do you inform people about the availability of the document?

A No. We do not inform people about the availability of the document. We supply the document in those instances where it appears to satisfy a request for information.

Q If there is a general request for information, you sometimes use this pamphlet in order to fill that particular

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used?

A Yes.

Q Even though it might not be a specific request for the remarks of Mr. Cullman, you would use this because it would be information on this particular subject?

A Yes.

Q I show you a series of documents called Tobacco and Health, which are items No. 37 through 60, and ask you if you can tell me who is responsible for the preparation of those documents?

MR. DAW: I believe it is 36 through 62, for clarity.

THE WITNESS: I believe I was not employed by the Tobacco Institute at the time these documents were prepared.

BY MR. BUTLER:

Q Are you telling me you can't answer it?

MR. ROTEMAN: What is the question?

MR. BUTLER: I said who prepares them? Whose responsibility is it to prepare them?

MR. ROTEMAN: Does he know who is responsible for their preparation before he got to the Institute?

MR. BUTLER: That is right.

THE WITNESS: No. I do not.

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BY MR. BUTLER:

Q Were any of them prepared during the period of time when you were in fact at the Institute? I notice one states the fall of 1967, the other is winter '67 - '68.

A I do not believe that either of those were prepared while I was employed at the Institute.

Q Were they discontinued after you got there?

A Yes.

Q Do you know why they were discontinued?

A Yes.

Q Why?

A I did not feel that they were at that time a useful kind of document.

Q You just supplanted it with other documents, or other uses, is that correct? With other documents rather than that type of document?

A We have other types of documents.

Q Yes. But the format as far as you were concerned was not adequate to give the message?

MR. ROYMAN: I think the record is clear on that. It is not relevant to jurisdiction anyway. You are lucky it is 4:30 and I am getting tired. How much longer?

MR. BUTLER: I don't know. I don't think that is a fair

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question, really. I got that all of the time, how much longer. Then that becomes a limit.

MR. ROTEMAN: It is not a limit. We have been sitting here since 9:30. We would like to know how much longer we will be sitting here.

MR. BUTLER: I can't really tell you because Mr. Dan keeps on giving me documents. I don't know how many more he has.

BY MR. BUTLER:

Q I show you a series of documents, January 20, 1972, January 12, 1971, January 12, 1971, being items No. 66, 67, and 68; 67 being addressed to you and the other, 66, being signed by you.

I will ask you if you can identify it for me?

A These appear to be copies of letters from a Mr. Jones of a radio station to myself and one other person at the Tobacco Institute, and a letter from me to Mr. Jones.

Q Does it deal with the appearance in California of certain personnel of the Tobacco Institute?

MR. ROTEMAN: What is the question?

BY MR. BUTLER:

Q Does it appear to deal with the appearance of certain personnel in California of employees of the Institute?

MR. ROTEMAN: It is what it says it is. The document is

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the best evidence of what it says.

BY MR. BUTLER:

Q Mr. Kloepper, is Gilbert Hubner the medical director of the Tobacco Institute?

A Yes. He is.

Q Did you arrange for Dr. Hubner to appear in California?

A I judge that Dr. Hubner was invited to visit this radio station and that I was made aware by the station of the invitation and that I acknowledged it.

Q Did you arrange that the invitation be made to Dr. Hubner?

A No.

Q Do you know how it came about that he was invited?

A No. I do not.

Q Do you know anybody within your organization that would have any information dealing with the appearance of Dr. Hubner before this particular group?

A No.

Q In your letter to Mr. Jones you conditioned Dr. Hubners appearance on the appearance of Dr. Baker. Is that the Dr. Baker of the National Board of Directors of the American Cancer Society?

A I do not recall whether there is a Dr. Baker who is

T076715

ac 30

a member of that board.

Q The letter to you says, "Dr. Sai Baker, member of the National Board of Directors of the American Cancer Society has also agreed to be our guest for the program."

In your letter of January 20, you say, "His appearance is as I mentioned to you conditioned on the appearance of Dr. Baker." You did not want Mr. Hubner to appear unless Dr. Baker appeared, and I take it it is the same Dr. Baker referred to in the letter of January 12.

A Yes.

Q Is there any reason for that?

A Yes.

Q What is that reason?

MR. ROTHEMAN: On which I will object on the grounds it is not relevant nor will it lead to any jurisdictional relevancy. I instruct the witness need not answer.

BY MR. BUTLER:

Q Have you had any communications with the California Association of Tobacco and Candy Distributors either by telephone or in writing?

A I don't recall any.

Q I show you item No. 64, being the remarks of H. R. Kornegay before the California Association of Tobacco and

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Ex 31

Candy Distributors. Do you know whether the draft of that particular document was made by your office?

A No. It was not.

Q Do you know a Mr. John Kelly of the California Association of Tobacco and Candy Distributors?

A No. I do not know Mr. Kelly.

Q I show you the document "Smoking and Health, an Age-Old Controversy," item 77. Was this particular document prepared under your direction and control?

A Yes.

Q What has been the distribution of that document generally?

A Generally it has been to respond to inquiries which we believe can be satisfied by reference to that document.

Q Do you attempt to stimulate inquiry with respect to the subjects covered in that particular document?

MR. ROTHMAN: Just a moment, counsel. Again we have got to get into this California question.

MR. BUTLER: I am going to ask him with respect to California. First of all I have to determine how he does it, if he does.

MR. ROTHMAN: What?

MR. BUTLER: Stimulate inquiries with respect to the

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matter of smoking and health.

MR. ROSENMAN: Do you stimulate inquiries from California? That is the question which I will permit him to answer. What he does in other areas I don't think is relevant. If you want to ask him what he does with respect to California people, I won't object.

BY MR. BUTLER:

Q Have you placed ads in national publications dealing with the problem of smoking and health, asking people to write in for information on that particular problem?

A Yes.

Q Can you tell me what national publications?

A Again, I will do so to the best of my recollection. Following ~~are~~^{are *} national magazines: World, Saturday Review, Nation, National Review, Psychology Today, Atlantic, Harpers, those I can recall.

Q Are there more?

A Yes.

Q Do you have a list in the office which would tell us all of the magazines which would be included in that particular answer?

A Yes.

Q Could we have such a list supplied to us?

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* To correct stenographic error. WK

ac 33

MR. ROTEMAN: We agreed to do that last night, counsel.

MR. BUTLER: The answer is yes?

MR. ROTEMAN: The answer is yes.

MR. BUTLER: Thank you.

BY MR. BUTLER:

Q Do you keep track of the number of inquiries which you get from the placement of the ads in the publications just mentioned and the number of documents which are mailed as a result of those particular inquiries?

A Yes, approximately.

Q Can you tell me approximately how many such documents have been mailed into California?

A I do not recall how many.

Q Is it possible to determine approximately how many have been mailed into California?

A I believe it is.

MR. BUTLER: Could we have that information?

MS. PFAELZER: Does he know it is available?

MR. BUTLER: Is it available?

MS. PFAELZER: Do you know that of your own knowledge right now, definitely, Mr. Kleefer.

MR. ROTEMAN: We don't want to turn anything over to him that may or may not exist. If it does exist, you are entitled

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to it. We don't want to be charged with you having committed us to something that we can't produce.

MR. BUTLER: As far as you can determine, is it available?

MR. ROTHEMAN: If there is, there is. If there isn't, there isn't.

THE WITNESS: I believe it is possible to provide at least a partial list or number.

MR. BUTLER: Thank you.

I think that is the agreement, that we can have that partial list.

MS. PFABER: It is a partial number, not a partial list.

MR. ROTHEMAN: We will give you what we have.

BY MR. BUTLER:

Q I show you a list of the documents attached to item 13 and ask you if those are the publications which you use in answer to the inquiries such as the item on No. 13.

A There is only one publication referred to on this list.

Q It is the same publication?

A Yes.

MR. ROTHEMAN: I don't know what kind of record you are making, counsel. I can tell you it is garbled now.

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BY MR. BUTLER:

Q With respect to these seven items, are these the ads which appear in the national publications referred to?

A I believe they are.

Q I show you item No. 8, which is a reprint of an ad in Barrons, which was in turn I believe reprinted in The Washington Post, and ask if that was prepared at your direction?

A No.

Q Do you know who prepared it?

A No.

Q Do you know whether it was prepared outside of the Tobacco Institute by some independent advertising agency?

A No.

Q Is it that you don't recognize the source of that particular ad in any way whatsoever?

MR. ROTEMAN: The state of the record is he doesn't know who prepared it.

MR. BUTLER: I just want to affirm that fact.

THE WITNESS: That is correct. I do not.

MR. FEARLER: Are you paying any attention at all whatsoever to the date of that?

MR. BUTLER: It is October 2, 1967.

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BY MR. BUTLER:

Q In preparing the documents for today's deposition did you help locate some of those documents?

A I have provided to my counsel some of the copies of some of the documents that you have shown to me.

Q Was that one of the documents that you provided, the reprint of the ad in Barrons?

A Yes. I believe it was.

Q Did you also prepare from your records the distribution of that particular ad; that is, the list of papers throughout the United States in which that particular ad was reprinted

MS. PFAELZER: Prepare for whom?

MR. ROTEMAN: What is the question?

MR. BUTLER: Do you want to repeat it?

(The pending question was read by the reporter.)

MR. ROTEMAN: Just a minute.

There has been no list submitted to you in connection with the motion to produce these documents.

MR. BUTLER: I just want to know if he prepared a list of all of the newspapers to which that particular ad was distributed?

MR. ROTEMAN: What he may or may not have done for his attorneys, I think, would be privileged.

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MR. BUTLER: I am not saying whether he prepared it for his attorneys. I just want to know if he prepared a list.

MR. ROTHMAN: You are saying did he prepare a list excluding from the import of the question anything he may have done for his attorneys? Is that right?

MR. BUTLER: Everything that you do for your attorneys is not thereby privileged. So I am just asking if he prepared a list. If you want to claim privilege with respect to, do so.

MR. ROTHMAN: I am asking you if you will exclude from the question --

MR. BUTLER: No.

MR. ROTHMAN: I have to object to the question.

MR. BUTLER: On what basis?

MR. ROTHMAN: On the grounds that what he did with his attorneys in preparation of this case is part of the attorneys' work product and confidential.

MR. BUTLER: I am not asking if he did it for his attorneys. I want to know if he prepared a list, if he prepared it for his attorneys and you are asking him --

MR. ROTHMAN: Go ahead and answer it.

BY MR. BUTLER:

Q Did you prepare a list?

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as 33

A I have attempted to provide counsel with a number of records in connection with various of the documents you have shown me --

MR. ROTEMAN: The question is did you prepare a list with respect to that one exhibit which counsel has shown you?

THE WITNESS: I do not know.

BY MR. BUTLER:

Q Did you prepare the ad known as "The Tobacco Institute believes the American public is entitled to complete --

MR. ROTEMAN: Excuse me a minute, Mr. Butler. I am sorry.

BY MR. BUTLER:

Q -- authenticated information about cigarette smoking and health"? I will show it to you.

MR. ROTEMAN: What is the question?

MR. BUTLER: I want to know if he prepared that particular one.

MR. ROTEMAN: Did he prepare Exhibit 7?

MR. BUTLER: Right.

THE WITNESS: NO.

BY MR. BUTLER:

Q Was it prepared under your direction?

A Yes.

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ac 32

Q Who prepared it?

A An advertising agency.

Q Which agency?

A Intermedia.

Q Where are they located?

A New York City.

Q Do you have a contract with Intermedia or was this just a one-shot effort?

A This was the latter.

Q With respect to this particular ad, did you direct its placement in various media throughout the United States?

MR. ROTHEMAN: I have no objection to your asking him what he did with respect to California.

MR. BUTLER: First of all we have to find out if he did direct placement.

MR. ROTHEMAN: No. You can ask him if he did anything in California. There doesn't have to be any condition precedent to that question.

BY MR. BUTLER:

Q Did you direct the placement of that particular ad in California?

A I believe I did.

Q Do you know what newspapers in California?

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ac 40

A No.

Q Is that also true with respect to item No. 11 that you directed its preparation?

A Yes.

Q Do you know what agency did that?

A I believe it was an agency here in Washington, D.C.

I do not recall the name.

Q You can ascertain that name?

A Yes.

Q Was that also placed in newspapers in California?

A No.

Q In what particular publications was it placed?

MR. ROTEMAN: If it is not in California --

BY MR. BUTLER:

Q Was it placed in nationwide, distributed magazines?

A No.

Q In what publications was it placed?

MR. ROTEMAN: The face of the document appears to indicate

it was The Washington Post on December 1, 1970.

BY MR. BUTLER:

Q Was that the only publication in which it appeared?

A No.

Q Do you know what other publication in which it

T076726

ac 41

appeared?

A As I recall, it appeared in The New York Times.

Q Was that publication limited to those two publications?

A I believe so.

Q With respect to the item No. 9, all advertising should be truthful, can you tell me if this was prepared under your direction?

A Yes.

Q By whom?

A I believe it was an advertising agency called Kaufman.

Q Where are they located?

A Washington, D. C.

Q Do you know the first name, if there is one?

A I believe it is Henry Kaufman & Associates.

Q This particular ad was placed in newspapers in California?

A I believe it was.

Q Can you determine from your records how much money was spent in California in the advertising of that particular document?

A I do not know whether I can.

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ac 42

Q Do you have financial records dealing with the amount of money which is spent on advertising?

MR. ROTHMAN: The financial records with respect to how much money he spent in California for advertising?

MR. BUTLER: That is right. First of all, I want to find out if he has financial records.

MR. ROTHMAN: We have been through this.

MR. BUTLER: I know. I still have to make my record.

MR. ROTHMAN: Okay. I have no objection to his answering whether or not he has financial records with respect to advertising in California.

MR. BUTLER: Otherwise you will direct him not to answer?

MR. ROTHMAN: Yes. If you won't reframe the question, I will direct him not to answer it. If you will reframe it, he can answer it. It is a deal you can't afford to refuse.

BY MR. BUTLER:

Q Do you have any financial records dealing with the placement of advertising in California?

A I do not know.

Q Do the advertising agencies with which you deal have such records to your knowledge?

A I do not know.

Q Do you supervise the payment of bills dealing with

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advertising?

ac 43

A Yes.

Q They cross your desk for approval?

A Yes.

Q Are they broken down with respect to where the advertisements are placed? Do you get separate and individual bills from each of the newspapers, at least an itemization from the advertising agency which would indicate the cost of each individual ad in each individual newspaper?

A I may have in some instances.

Q In most instances, isn't that correct, that you can tell from the financial, from the billings where the advertising is placed and how much it cost you in each particular newspaper? Isn't that correct?

MR. ROTHEMAN: He said he may have in some instances.

MR. BUTLER: I want to say in most instances. That is the question.

THE WITNESS: I don't know in some instances.

MR. BUTLER: In some instances you do?

MR. ROTHEMAN: That is what he said.

BY MR. BUTLER:

Q Has the document No. 10, How Much is Known About Smoking and Health, been prepared under your direction?

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A Yes.

Q By whom?

A I do not know.

Q Was it prepared by an advertising agency?

A Yes.

Q It is that you just don't recall which agency?

A I do not recall the name of the agency.

Q Do you know where it was located?

A No.

Q Do you have in mind that it might be prepared by one of several agencies?

A Yes.

Q But you can't identify which one?

A Yes.

Q What agencies do you think it might be prepared by?

A It might have been prepared by Kaufman. I would not make any further guess.

Q Do you know whether this particular item was re-produced at any other agency other than broadcasting?

A I believe it was.

Q Do you know what other publications?

A No. I do not.

Q Do you know whether any of the publications were in

T076730

ac 45

California?

A No. I do not.

Q Do you know whether any of the publications were national publications?

A Yes.

Q Do you have a thought that it might be one of several magazines, one of several publications?

A Yes.

Q What publications do you have in mind?

A I have in mind Broadcasting Magazine --

Q Is that something different than Broadcasting?

A No.

Q Was it republished in any other publication other than Broadcasting Magazine?

A Yes.

Q What other publications, if you know?

A I ^{do} ~~did~~ not know.

Q Do you have in mind more than one publication as an alternative? In other words, it might have been published in X, Y or Z, but you are not sure which one it was?

A I know it appeared in several publications. I do not recall the names of those publications.

Q Are these national publications?

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* To correct stenographic error. WK

as 46

A I do not know.

Q Do you have documents which can tell you that? Is that correct?

A I may have.

Q Usually and ordinarily you would have such documents? Isn't that correct?

MR. ROTEMAN: That is a question that has been asked 20 times. It has been objected to every time. It is an improper question.

BY MR. BUTLER:

Q Did you have anything to do with the preparation of the show "The Advocates"?

A No.

Q Did you have any public relations duty in connection with the show The Advocates?

A Yes.

Q What were those duties?

A There were two.

Q What were they?

A One was to ^{advise *} ~~advise~~ a person who had been invited to participate in that program. The other was to issue a news release recounting that program.

Q Who did you advise with respect to the person who was

* To correct stenographic error. *W** T076732

ac 47

appearing on the program?

A The president of the Institute.

Q Mr. Kornegay?

A Yes.

Q What did you advise him with respect to that particular appearance?

MR. ROTHMAN: No which I will object on the grounds it is not relevant nor will it lead to relevant material with respect to jurisdiction.

MR. BUTLER: What I am trying to determine, did you advise him with respect to content of his remarks?

THE WITNESS: I do not recall.

BY MR. BUTLER:

Q Did you also advise Mr. Cullman with respect to a broadcast called "Face the Nation"?

A Yes

Q What did you advise him?

A I do not recall.

Q Did you advise him as the chairman of the Executive Committee of the Schacco Institute?

MR. ROTHMAN: Advise him what?

MR. BUTLER: You said you don't remember what the advice was but was it your duty in connection with your position as

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Chairman of the Executive Committee of the Tobacco Institute?

THE WITNESS: Yes.

BY MR. BUTLER:

Q Is this a copy of the news release which you had prepared under your direction with respect to the appearance of Mr. Kornegay? That is referred to as Item No. 135.

A Yes. It appears to be.

Q To whom was that particular document distributed?

A News media.

Q What news media and how?

A I do not remember either detail.

Q Do you on occasion distribute such press releases to the Associated Press or United Press?

A On occasion I distribute news releases to those organizations.

Q Do you recall whether you distributed that particular release dealing with the appearance of Mr. Kornegay on the televised debate referred to in Item 135 to the Associated Press or United Press?

A I do not recall.

Q Would you usually and ordinarily do so?

MR. ROYMAN: Objection. I instruct him not to answer.

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BY MR. HUNTER:

Q I show you item No. 14 which is an ad dealing with "Smoking causes Controversy, you have only heard half of it, now get both sides, watch The Advocates," and ask if that was prepared under your direction?

A Yes.

Q Do you know who prepared the ad?

A Yes.

Q Who?

A An advertising agency named Dobrow.

Q Could you spell it?

A D-o-b-r-o-w.

Q Where are they located?

A In Maryland.

Q Did you direct the placement of that particular ad in newspapers in California?

A I directed the placement of the ad in a number of newspapers throughout the country.

Q Including California?

A I do not recall the particular newspapers or their locations.

Q Presumptively, would it have included California?

MR. HUNTER: Don't answer that question unless Mr. Butler

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tells you he thinks it is a proper question.

BY MR. BUTLER:

Q Did you exclude California in the distribution of that particular ad?

A No.

Q Do you know whether the show The Advocates appeared in California?

A No.

Q Did you have any monitoring or reporting service which would report to you where the show The Advocates was shown?

A No.

Q Did you have any correspondence with the producers of The Advocates as to where it was shown?

A No.

MR. BUTLER: We want to take five minutes. We may be finished.

(Brief recess.)

BY MR. BUTLER:

Q Mr. Klopfer, I want to show you document 133 dealing with a press release from the Tobacco Institute in connection with the simultaneous use with the 1971 Surgeon General's report on Smoking and Health. Was that prepared under your

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direction and control?

A Yes.

Q Can you tell me the distribution list of that particular document?

A No.

Q Do you know whether it was given to either the Associated Press or United Press?

A No. I do not.

Q Is there any way of determining from your records as to who received that particular press release?

A I do not know.

Q Do you follow a standard procedure with respect to the distribution of press releases?

A No. I do not.

Q Do you have a manual for use by the employees of the Tobacco Institute with respect to the distribution of press releases?

A No. I do not.

Q Do you have a standard instruction with respect to the distribution of press releases?

A No. I do not.

Q Do you have clipping services which report to you on whether this particular press release was reprinted or

T076737

ac 52

published in any newspaper in California?

A I have a clipping service which may reflect in part the use of information of that sort.

Q So you do employ clipping services in order to determine the effectiveness of the press releases?

A No. I do not.

Q What do you use the clipping services for?

A To obtain information as to what appears in the press about tobacco.

Q For the purpose of determining whether a reply is necessary?

MR. ROTHMAN: Just a moment. What has that to do with relevance?

MR. BUTLER: I want to see if that would also include newspapers in California.

MR. ROTHMAN: You have a right to inquire whether it includes papers in California. But you have no right to inquire what the purpose of keeping a clipping service is.

MR. BUTLER: I am inquiring into the procedure and operation of his office with respect to the clipping services in California. Do you have clipping services in California?

THE WITNESS: No.

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BY MR. BUTLER:

Q You have no clipping services which include newspapers from California?

A Yes.

Q Where is that clipping service located?

A In the eastern part of the country. I do not know what city.

Q Do these include then clippings from newspapers in California?

A Yes.

Q Do these come to your attention? The clippings from California dealing with tobacco?

A Some of them do.

Q What do you do with them when they come to your attention?

A I scan them.

Q For what purpose?

A To be informed.

Q Once you are informed, do you do anything about it?

A About what?

Q About the information you receive from the clipping services dealing with tobacco in California?

MR. ROSEN: You mean what happens to it when it gets

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ac 54

into his mind?

MR. BUTLER: I want to find out what he does about it.

MR. ROTHEMAN: With the information?

MR. BUTLER: That is right.

MR. ROTHEMAN: How can he answer that question?

MR. BUTLER: He can answer it. Perhaps he takes some action as a result of it.

MR. ROTHEMAN: When you put this information into your mind, do you do anything about it? Is that the question? If it is, it can't be answered.

MR. BUTLER: That isn't the question.

MR. ROTHEMAN: What is the question?

MR. BUTLER: Read the question. I want to find out what he does with the information which is supplied to him from California newspapers by the clipping services.

MR. ROTHEMAN: That is an impossible question to answer.

MR. BUTLER: It may not be. He can answer it.

MR. ROTHEMAN: Can you answer it? If you can, try it. If you can't, try it anyway.

THE WITNESS: I will try. I do not have in my mind anything that I do particularly with information which I derive from a newspaper story which appears in California.

MR. ROTHEMAN: That is good. Jim, I am not trying to

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forestall your legitimate inquiry. But it is like saying to me, "Frank, what do you do with the information once it gets in your head?" Generally, I forget it.

MR. BUTLER: I take it that as a Public Relations representative of the tobacco industry, if it affects the position of the tobacco industry and you can use your offices as a Public Relations representative, you may do something about it. Is that correct?

MR. ROTEMAN: You have made some statements there that are not factual. But let's proceed, but without alluding to them all, let's proceed. Mrs. Pfaelzer points out quite correctly there is no evidence he is a representative of the tobacco industry. He is a representative of the Tobacco Institute.

BY MR. BUTLER:

Q Mr. Kloepper, with respect to item No. 133, can you tell me whether this particular press release was reproduced in California from any documents which are in your possession?

A I do not know.

Q Is it possible that you have documents which would reflect whether this particular news release was printed in California?

A It is possible.

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Q Do you make any attempt to show the effectiveness of your operation to the Executive Board of the Tobacco Institute?

MR. ROTEMAN: To which I will object on the ground it is not relevant nor will it lead to any relevant information with respect to jurisdiction.

BY MR. BUTLER:

Q Do you report to the Tobacco Institute on the effectiveness of your operation and specifically included within that is its effectiveness in the United States including California?

MR. ROTEMAN: To which I will object on the grounds it is not relevant as to the issue of jurisdiction.

BY MR. BUTLER:

Q Do you prepare any written reports to the Executive Board or to the Board of Directors with respect to the effectiveness of your operations dealing with Public Relations?

MR. ROTEMAN: Same objection. Same instructions.

BY MR. BUTLER:

Q Do you make an annual report to the Board of Directors or to the Executive Board dealing with the effectiveness of the Public Relations of the Tobacco Institute?

MR. ROTEMAN: Same objection and same instruction.

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MR. BUTLER: I have no further questions. Thank you.

MR. ROTEMAN: You asked a series of questions, I guess it would be the last five or six in number, with respect to whether or not reports were made to the Board of Directors with respect to the effectiveness of the program and a whole series of questions that flowed from the same topic.

Although I have objected and I have raised the basis for the objections, the witness advises me while we were recessed that he makes no such reports and no such reports exist. So if you want to go back on the record for the purposes of getting those negative answers, I will withdraw the objection.

I don't want to create an unnecessary problem for you. It seems to me that that is in the spirit of helping you.

May I correct, Mr. Kloepper, in what I characterize as your answers to those questions?

THE WITNESS: Yes.

BY MR. BUTLER:

Q Do you make oral reports on the effectiveness of the Public Relations?

MR. ROTEMAN: In California?

MR. BUTLER: No, generally the public relations of your organization to the Board of Directors or the Executive Board?

THE WITNESS: No. I do not.

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BY MR. BUTLER:

Q Do you report directly to Mr. Kornegay, the president, with respect to the effectiveness of the Public Relation itself rather than to the Board of Directors or to the Executive Board?

A No. I do not.

Q You don't report to anybody with respect to the effectiveness of your efforts. Is that correct?

MR. ROTHMAN: Does that conclude the deposition?

MR. BUTLER: Yes. That concludes the deposition.

It is stipulated it may be signed before any notary?

MR. ROTHMAN: Yes. We have that same stipulation with regard to Mr. Kornegay.

MR. BUTLER: Yes.

MR. ROTHMAN: We have a further understanding that Exhibits 1 through 155, which I think is the last number, will now be left in the care and custody of the court reporter who will, I guess, make the necessary copies.

MR. BUTLER: That is right.

MR. ROTHMAN: With respect to those exhibits which are not copiable, what do you suggest we do with those?

MR. BUTLER: Have the originals lodged with the court.

(Discussion off the record.)

MR. ROTHMAN: We will have the court reporter file the

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exhibits that are not copiable with the court.

(Discussion off the record.)

MR. ROTHMAN: What we are saying to you is the documents, the question is are the documents which we have supplied to you business records. That is what you asked me.

MR. BUTLER: That is right.

MR. ROTHMAN: I am responding to that question. The documents we have presented to you are documents which were called for pursuant to your Notice to produce. They were obtained from the Institute when they were available at the Institute.

In some instances you called for resumes of individuals. Those are obviously not business records. In other instances, you called for lists of employees. Those are obviously not business records.

In other instances you called for selective treatises of various doctors and those are obviously not business records, and on and on and on.

So all I can say to you is we are prepared to say on the record that we have supplied you with the documents that you have called for. We have reservations obviously as to their admissibility and relevancy, but in no event will we raise best evidence arguments. They are not originals. We don't expect

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we will ever raise that.

MR. BUTLER: Is it agreed that they came from the records of the Tobacco Institute?

MR. ROTHMAN: The answer in most instances is yes. They came from the files of the Tobacco Institute. But obviously there are some documents there which did not come from the files of the Tobacco Institute.

We told you that as we brought them in.

MS. PFAELZER: Each and every one has been specified as to source. I have no objection, I think we have already said to you what the source of each document is, as they were brought in. We have no reason, desire or inclination to keep from you the source of any documents we have turned over to you.

MR. BUTLER: Is it agreed that the depositions will be prepared and presented to the witnesses and filed within a reasonable period, prompt period of time?

MR. ROTHMAN: Yes.

MR. BUTLER: Can we agree on a time? Within two weeks from preparation?

MR. ROTHMAN: Yes. I don't think that is a problem. I don't know if a witness will be away for a week or something. But the answer is we will file them promptly and reasonably

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upon receipt of the deposition.

MR. BUTLER: As a general period, we will use the time period of two weeks from the time of preparation?

MR. ROTHMAN: Two weeks unless there is some compelling reason we can't do it.

MR. BUTLER: Fine. With the same stipulation with respect to Mrs. Golden, that, too, can be signed before any notary. We will conclude our business today in Washington.

207 (I have read the foregoing pages, ~~272~~ through 330, inclusive, which contain a correct transcript of the answers made by me to the questions therein recorded.)

ac end

Milton


WILLIAM KLOEPPER, JR.

* To correct stenographic error. WK

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